

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David Urush Petitioner-Appellant, v. Scott County Board of Review, Respondent-Appellee.	ORDER Docket Nos. 11-82-1302 Parcel Nos. 952739001 Docket Nos. 11-82-1302 Parcel Nos. 952755006
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On March 13, 2013, the above-captioned appeal came on for telephone hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant David Urush was self-represented. Assistant County Attorney Robert Cusack is counsel for the Scott County Board of Review. Deputy Assessor Ron Beckenbaugh represented it at hearing. The Appeal Board having reviewed the record and being fully advised finds:

Findings of Fact

David Urush represented the Urush Living Trust, which owns two adjacent parcels of real property located at 27980 Territorial Road, LeClaire, Iowa. The two parcels total 27.06 acres. Parcel Number 952739001 is 18.92 acres and is mostly a wooded area. Its only improvement is a 1000-square-foot canopy used to store firewood. This parcel was assessed at \$172,930, allocated as \$167,000 in land value and \$5930 in improvement value. Parcel Number 952755006 is 8.14 acres. According to the property record card, it is improved with a two-story home totaling 2,520 square feet. It was built in 1965 and has a grade of 3-5 (good quality) and in below normal condition. It also has a

single car garage. This parcel was assessed at \$233,020, representing \$95,000 in land value and \$138,020 in improvement value.

According to the Board of Review petition, Urush protested to the Board of Review on the ground that there was an error in the assessment under Iowa Code section 441.37(1)(a)(4). This claim was akin to a market value claim, as Urush asserted the assessment was too high because the property is all timber. *See* § 441.37(1)(a)(2). Additionally, the Board of Review confirmed that at its hearing Urush orally protested that the property's classification should be changed from residential to agricultural, as it was classified previously. § 441.37(1)(a)(3). The Board of Review modified both assessments. It changed the assessment of Parcel 952739001 to \$81,610 and Parcel 952755006 to \$226,020.

Urush then appealed to this Board re-asserting his claims. He contends the correct value of Parcel 952739001 is \$6,610 and Parcel 952755006 is \$153,880.

Ultimately, Urush believes the property should be reclassified as agricultural realty. He asserted this was the property's classification until the 2011 assessment and nothing has changed regarding its use. He also testified that almost all of the property, except where his home sits, is woodland. He also indicated it is an on-going process to reforest the property.

Urush stated his intent to put this property into the Forest Reserve program. He has completed paperwork request the exemption, but this was not filed in time to be applicable for the 2011 assessment at issue. He presented a copy of the application for Forest or Property Tax Exemption for 17.0 acres.

Finally, Urush noted that he believed the canopy, or shed, located on Parcel 952739001 was over-valued. It was assigned a value of \$5930, and he does not believe it is worth more than a few hundred dollars.

Deputy Assessor Ron Beckenbaugh testified on behalf of the Board of Review. He stated that Urush's property was reclassified between 2010 and 2011 as part of revaluation.

The Board of Review also submitted an appraisal of the subject property completed by Scott Broders, of Broders Appraisal, Davenport, Iowa. Broders, rather than valuing the parcels separately, combines them and then subdivides them into three different units in order to value them. He leaves a one-acre homestead, a second small 3.7 acres, and then determines the remaining 22.3 acres would best be used for residential development. He values these units at \$182,000; \$55,000; and \$335,000 respectively. First, Broders' appraisal ignores the current division of the property as two parcels and essentially assumes there would be three separate buyers for the property. Furthermore, there is no allocation of his value conclusions to the *existing* assessment parcels, and we cannot begin to determine what those values would be.

Beckenbaugh also noted the canopy on Parcel 952739001 valued at \$5,930 was reduced to \$610 for the 2012 assessment.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

Urush protested there was an error in the assessment under section 441.37(1)(a)(4); however, his claim was really that the property was over assessed according to section 441.37(1)(a)(2). In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Urush provided no evidence to support his claim that the property was over assessed. The only market value evidence in the record, the Board of Review's appraisal, supported the assessment.

Urush also asserted the property was misclassified according to section 441.37(1)(a)(3). The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE r. 701-71.1 et al. (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified "according to its present use and not

according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in *good faith used primarily for agricultural purposes* except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for *intended profit*.

. . .

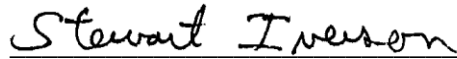
Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

r. 701-71.1(3).

In this case, Urush has failed to prove his property should be classified as agricultural realty. Even though it used to be classified agricultural, nothing indicates the current use of the subject property is primarily for agricultural purposes for intended profit. Further, the real estate is not held or operated in conjunction with agricultural real estate. For this reason, we affirm the assessments of Urush’s parcels.

THE APPEAL BOARD ORDERS the assessment of property owned by the Urush Living Trust located at 27980 Territorial Road, Le Claire, Iowa as determined by the Scott County Board of Review is affirmed.

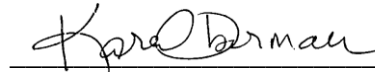
Dated this 22nd day of April 2013.



Stewart Iverson, Presiding Officer



Jacqueline Rypma, Board Member



Karen Oberman, Board Member


Copies to:
David Urush
27980 Territorial Road
Le Claire, Iowa 52753
APPELLANT

Robert Cusack, Assistant County Attorney
400 West 4th Street
Davenport, Iowa 52801
ATTORNEY FOR APPELLEE

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on April 22, 2013.

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other


Signature _____